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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ROBERT DEAN LAVERDURE, Defendant and Appellant.	B241448 (Los Angeles County Super. Ct. No. KA096586)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jack P. Hunt, Judge, and Wade D. Olson, Commissioner. Affirmed.

California Appellate Project, Jonathan B. Steiner and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Robert Dean Laverdure appeals from the judgment entered following his plea of no contest to being a felon in possession of a firearm (former Pen. Code, § 12021, subd. (a)(1))[1] and his admission that he previously had been convicted of robbery (Pen. Code, § 211)[2] within the meaning of the Three Strikes law (§ 667, subds. (b)-(i), § 1170.12, subds. (a)-(d)). The trial court sentenced Laverdure to two years eight months in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*.[3]

At approximately 4:30 p.m. on November 8, 2011, Azusa Police Officer Peter Hoh received a radio call directing him to 600 West Paramount Avenue. The dispatcher indicated there was a man with a gun there.

When Hoh arrived at the intersection, he saw Laverdure, who matched the description of the man given by the dispatcher. He was not wearing a shirt and had multiple tattoos. His car was parked in a driveway approximately "50 yard[s] deep." There was a house next to the driveway, not far from Laverdure's parked car and it appeared to Hoh that there were people inside. As Hoh approached, he saw a man, holding his shirt, as he was coming out of the house's "converted garage." It was a residential neighborhood and there were children playing nearby, people arriving home from work and a school approximately 200 yards from the house.

Two additional police officers had also been directed to the intersection and one of them, Officer Franks, saw Laverdure "popping out of the car by the driver's side." Franks and the other officer, Corporal Kimes, ordered Laverdure to get out of his car. He complied with the order, the officers detained him and placed him in the back seat of a patrol car. Hoh then approached Laverdure, told him he was being detained and, without

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[1] (Stats. 2010, ch. 711 (Sen. Bill No. 1080), § 4, provides for repeal of tit. 2, operative Jan. 1, 2012.) Laverdure violated the statute on November 8, 2011.

[2] All further statutory references are to the Penal Code unless otherwise indicated.

[3] The facts have been taken from the transcript of the preliminary hearing.

advising him of his *Miranda*[4] rights, told him that " 'if there [was] a gun in [his] car,' " the officers were " 'going to be able to find it. [So, he] might as well tell [them then].' " Laverdure responded, " 'Yes. I have a gun[,]' " and he indicated that it was inside the car.[5]

After Hoh spoke with Laverdure, he, Officer Franks and Corporal Kimes approached his car with their guns drawn as they did not know whether there was anyone else inside. In plain view from outside the passenger side window, Hoh could see a gun between the center console and the front seat. The handle was up and the barrel of the gun was pointing down. It was later determined that the gun was a loaded "44 Magnum Ruger" handgun. The model was a "red hawk" or "red eye" and the gun had a black handle and silver body.

After the gun was found, Hoh returned to the patrol car where Laverdure was being held and, after advising him of his rights under *Miranda*, asked him if he understood his rights, then asked him if he wished to speak with the officer. Laverdure indicated that he understood his rights. However, after agreeing to speak with Hoh, Laverdure decided to "stay[] quiet."

Laverdure was transported to the police station, where Hoh again advised him of his *Miranda* rights, this time using a written form. Laverdure again indicated that he understood his rights, but told the officer that " 'no,' " he did not wish to speak with him. In the meantime, officers ran a "check" on Laverdure and determined that he was on parole.

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[4] *Miranda v. Arizona* (1966) 384 U.S. 436.

[5] Hoh indicated that he did not advise Laverdure of his *Miranda* rights at that time because they were in a residential neighborhood with children and others nearby. According to Hoh, when circumstances such as those exist and a potentially loaded gun is involved in the incident, officers do not always take the time to give *Miranda* warnings if they are simply asking the suspect about the gun. "[P]ublic safety" is of primary importance. The officers want to make certain that a child or other individual does not "get ahold of the weapon."

2. *Procedural history*.

In an information filed February 29, 2012, it was charged in count 1 that, on or about November 8, 2011, Laverdure, a convicted felon, possessed a firearm in violation of former section 12021, subdivision (a)(1)), a felony. It was further alleged with regard to count 1 that Laverdure previously had been convicted of six offenses, including robbery in violation of section 211, and that "prison custody time for the above offense [was] to be served in state prison." Count 2 alleged that on or about November 8, 2011, Laverdure possessed ammunition in violation of former section 12316, subdivision (b)(1), a felony. It was further alleged with regard to count 2 that Laverdure was "prohibited from owning or possessing a firearm pursuant to [former] sections 12021 and 12021.1 . . . and sections 8100 and 8103 of the Welfare and Institutions Code, having been previously convicted of" robbery in violation of section 211 and receiving stolen property in violation of section 496, subdivision (a).

As to both counts 1 and 2, the information indicated that "an executed sentence for a felony pursuant to [these] subdivision[s] [would] be served in state prison pursuant to . . . section 1170[, subdivision] (h)(3) in that . . . Laverdure, ha[d] suffered" a prior serious (§ 1192.7) or violent (§ 667.5, subd. (c)) felony, robbery. In addition, it was alleged that his prior conviction for robbery amounted to a strike pursuant to the Three Strikes law. The information also alleged that, due to Laverdure's prior convictions he was ineligible for probation (§ 1203, subd. (e)(4)) and that, for five of the six priors, he had served prison terms pursuant to section 667.5, subdivision (b).

At proceedings held on March 7, 2012, Laverdure rejected the People's settlement offer of four years in prison, entered pleas of not guilty to the crimes alleged in counts 1 and 2 and denied the remaining allegations.

On April 12, 2012, Laverdure filed a motion to suppress evidence pursuant to section 1538.5. He asserted that the law enforcement officers had illegally seized the firearm on November 8, 2011 and that it, and any evidence stemming from it, should be suppressed. Laverdure argued that he had been detained and, without the benefit of *Miranda* warnings, had been questioned regarding a gun. Then, based on evidence

obtained in violation of *Miranda*, the officers had found the gun pursuant to a warrantless search of Laverdure's car. The trial court, however, never ruled on the motion to suppress evidence. The motion was withdrawn the following day, on April 13, 2012, when Laverdure decided to enter a plea.

On April 13, 2012, the parties informed the court that Laverdure's counsel "ha[d] been able to work . . . out a disposition or a deal for 32 months [in] state prison." Laverdure indicated that he had read over his proposed plea form with his attorney, discussed the nature of his constitutional rights and of the charges against him and understood the consequences of his plea. He informed the trial court that he had initialed the boxes on the plea form indicating that he understood and had waived his right to a jury or court trial, his right to confront the witnesses against him, his right to cross-examine the witnesses against him, his right to use the subpoena power of the court and his right to remain silent. The trial court then informed Laverdure that, as a result of his plea, he would be sentenced to state prison for 32 months. Upon his release from state prison, Laverdure would be placed on "community supervision." If he violated that supervision, Laverdure could "be sentenced to county jail for up to 180 days for each violation." Laverdure then indicated that he was entering his plea "freely and voluntarily and because [he felt] it [was] in [his] best interest to do so."

After his counsel stipulated that there was a "factual basis for the plea based on the preliminary hearing transcript, the probation report and the arrest reports," Laverdure pleaded "no contest" to "count 1 of the information, a violation of [former] section 12021[, subdivision] (a)(1) . . . , possession of a firearm by a felon[.]" Laverdure then admitted that he had suffered a prior conviction for robbery in violation of section 211 pursuant to sections 667, subdivisions (b) to (i) and 1170.12, subdivisions (a) to (d), the Three Strikes law.

The trial court found Laverdure's plea to have been "freely and voluntarily made with an understanding of the nature and consequence[s] thereof and that there [was] a factual basis for [the] plea[]." The court accepted the plea and admission and found Laverdure "convicted as charged."

At proceedings held on May 11, 2012, the trial court ordered probation denied, sentenced Laverdure to 16 months in prison for his conviction of count 1, possession of a firearm by a felon, then doubled the term to 32 months pursuant to the Three Strikes law. Laverdure was awarded presentence custody credit for 120 days actually served and 120 days of conduct credit. The court ordered Laverdure to pay a $240 restitution fine (§ 1202.4, subd. (b)), a stayed $240 parole revocation restitution fine (§ 1202.45), a $30 criminal conviction assessment (Gov. Code, § 70373) and a $40 court operations fee (§ 1465.8, subd. (a)(1)). The trial court then dismissed all remaining charges and allegations and recommended that Laverdure be sent to fire camp.

On May 22, 2012, Laverdure filed a timely notice of appeal and request for a certificate of probable cause. On May 23, 2012, the trial court denied Laverdure's request for the certificate.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed October 22, 2012, the clerk of this court advised Laverdure to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider.

With regard to the trial court's denial of Laverdure's certificate of probable cause, we note that section 1237.5 provides that "[n]o appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere . . . except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court." "Section 1237.5 should be 'applied in a strict manner.' " (*People v. Placencia* (2011) 194 Cal.App.4th 489, 494, citing *People v. Mendez* (1999) 19 Cal.4th 1084, 1098.) "The purpose for requiring a certificate of probable cause is to prevent frivolous appeals challenging convictions following guilty

and nolo contendere pleas." (*People v. Placencia*, *supra*, at p. 493, citing *People v. Johnson* (2009) 47 Cal.4th 668, 678.)

Here, Laverdure filed a statement, under penalty of perjury, asserting that his plea had been illegal for a number of reasons. He first indicated he had ineffective assistance of counsel in the trial court. He urged that his counsel did not follow through on his motion to suppress evidence and refused to request an evidentiary hearing regarding the validity of his strike.

With regard to the trial court, Laverdure argued that the judge who sentenced him in this case tried to intimidate him and "acted like [a] 2nd prosecutor" rather than a fair "officer of the [judiciary]." Laverdure indicated that his ineffective legal representation and the attitude of the trial court made him feel " 'railroaded.' " He believes the prosecutor, his counsel and the trial court all attempted to make him appear to be a violent person in order to justify his plea and the sentence imposed.

A review of the record fails to support Laverdure's assertions. There is nothing in the record which indicates any of the parties, including the trial court, acted improperly. The trial court properly acted within its discretion when it denied Laverdure's request for a certificate of probable cause and neither the prosecutor nor Laverdure's counsel attempted to coerce Laverdure into entering the plea. The record indicates Laverdure, after being properly advised of his constitutional rights and the consequences of the plea, knowingly and voluntarily entered it.

In a letter dated May 28, 2012 and sent to the clerk of this court, Laverdure insisted that he was "totally innocent" of the crime to which he had pled as well as the robbery alleged pursuant to the Three Strikes law. He again urged the trial court erred in denying his request for a certificate of probable cause and asked the clerk to "look into [his] appeal."

With regard to the robbery, Laverdure asserted it was "nothing more [than] 2 kids fighting over a bicycle seat." The incident, however, has affected his entire life. "[Ever] since that law passed," he has "done nothing but 80% on any little case [he] would catch."

With regard to the present case, he believes he was "set . . . up" by a roommate with whom he had been having a dispute. The roommate had apparently burglarized Laverdure's room and Laverdure had not been in his car for at least 10 or 15 minutes before the gun was found there by police officers. They then took him into custody and questioned him without the benefit of *Miranda* warnings. Moreover, Laverdure indicated he entered the plea because the trial court threatened to sentence him to the maximum term possible, 12 years at 80 percent, if he requested a trial.

In a second letter, filed November 15, 2012, Laverdure asserted he "took a plea [bargain] out of misrepresentation from [his] public defender." He claims his trial counsel was ineffective and he felt "forced" to enter the plea. Laverdure indicates he felt that his counsel was acting "as a second prosecutor rather [than] a defense attorney." Laverdure asserts that evidence at the preliminary hearing showed that his rights pursuant to *Miranda* were clearly violated. In addition, his counsel refused to request a " 'strike' " hearing to verify the validity of his strike. He again asserts that the "robbery" was nothing more than "two kids arguing over a bike." Finally, Laverdure argues that the "judge on [his] case . . . was bias[ed] and showed on the bench [an] abuse of authority." In closing, Laverdure asserts that he is simply asking "that [the] court review the transcripts, and vacat[e] the strike enhancement as it [is] obvious [he] was never given the opportunity to have a 'strike' hearing."

With regard to Laverdure's assertion his trial counsel was ineffective, a review of the record indicates that it is true she did not follow through with his motion to suppress evidence. However, she negotiated a plea for Laverdure under the terms of which he will serve less time than that initially offered by the People and significantly less time than the maximum he faced. Moreover, a reading of the record indicates Laverdure, with the assistance of his counsel, knowingly and voluntarily withdrew his motion to suppress and entered the plea because he felt it was in his best interest to do so. As to his strike, he was convicted of the robbery in 1991. Even if counsel could have obtained the records from the case, there is little if any likelihood that Laverdure could show that his 21-year-old plea to the crime was improper and that he should now be allowed to withdraw it.

Under these circumstances, it cannot be said that trial "counsel's representation fell below an objective standard of reasonableness under prevailing professional norms" and that Laverdure suffered prejudice as a result of counsel's actions. (*People v. Carter* (2003) 30 Cal.4th 1166, 1211; see *Strickland v. Washington* (1984) 466 U.S. 668, 694.)

Laverdure's argument the "judge on [his] case . . . was bias[ed] and showed on the bench [an] abuse of authority" is also unfounded. The record indicates the trial court, after reading over Laverdure's plea forms, properly determined that Laverdure understood the constitutional rights he was waiving, the nature of the charges against him and the consequences of entering a plea. Nothing in the record indicates the trial court "railroaded" Laverdure. In fact, per Laverdure's request, the trial court recommended that he be sent to fire camp.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.